

N.D.A.G. Letter to Odegard (March 31, 1986)

March 31, 1986

Mr. James T. Odegard
Grand Forks County State's Attorney
Grand Forks County Courthouse
P.O. Box 607
Grand Forks, ND 58206-0607

Dear Mr. Odegard:

Thank you for your letter of March 10, 1986, concerning the terms "residing" and "reside" as used in N.D.C.C. § 40-47-06.

This particular statute provides for the composition of the city zoning commission. In 1975, the legislative assembly amended N.D.C.C. §40-47-06 to provide for representation upon the city zoning commission of persons residing outside the corporate limits but within the limits of the extraterritorial zoning authority of a city provided for in N.D.C.C. §40-47-01.1. This latter statute allows extraterritorial zoning by the city to unincorporated territory within certain distances of the city depending upon the population of the city.

The factual situation described in your letter involves a member of the city zoning commission who has been appointed to the commission pursuant to the authority provided for in N.D.C.C. § 40-47-06 where extraterritorial zoning has occurred. The question appears to be whether the person resides within the applicable territorial limits of the zoning regulation authority exercised by the city. The facts suggest that the person owns land within the territorial limits, but whose dwelling house is physically located outside of such limits.

The North Dakota Supreme Court, in Dietz v. City of Medora, 333 N.W.2d 702 (N.D. 1983), had the occasion to discuss the question of residency in general. According to this decision, there is a difference between actual residence and legal residence. One may only have one legal residence, but may have several actual residences. In determining one's legal residence, the rules of residency as set forth in N.D.C.C. § 54-01-26 must be consulted. However, in determining one's actual residence or residences, the word "resident" is used in its ordinary sense meaning. The most common ordinary sense definitions provided for this term by the Supreme Court involve places where a person dwells or lives for a period of some duration.

Finally, the Supreme Court indicated that the determination of whether a person is an actual resident or a legal resident of one place or another is a question of fact not of law. Such a question can only be answered by an application and review of the appropriate facts of each particular case. 333 N.W.2d at 704.

The question of whether Mr. Drees resides within the territorial limits of the zoning regulation authority exercised by the city of Grand Forks is a question of fact upon which I may not provide a legal opinion. Instead, the answer must be derived by you in applying the facts of the case to the legal principles described previously in this letter. However, I do believe that I can be of assistance in discussing the terms "residing" and "reside" as they apply to a situation involving N.D.C.C. § 40-47-06, one's land, and one's dwelling house.

A principal rule of statutory construction is that statutory words must be considered and reviewed in the context in which they are used and in light of the purpose for which they were enacted. county of Stutsman v. State Historical Society, 371 N.W.2d 321, 327 (N.D. 1985). Indeed several courts have held that the term "reside" is an elastic term to be interpreted in light of the purpose of the statute in which the term is used. In Re National Discount Corporation, 196 F.Supp. 766 (W.D.S.C. 1961); McGrath v. Stevenson, 77 P.2d 608, 609 (Wash. 1938).

In reviewing the legislative history as to the 1975 amendments to N.D.C.C. § 40-47-06, one observes an apparent intent on the part of the Legislature to provide representation upon the city zoning commission for those persons who were subject to the extraterritorial zoning authority of the city. In other words, by legislative amendment an attempt was made to provide those persons who would be affected by extraterritorial zoning of a city with representation on the commission who will perform such extraterritorial zoning.

Therefore, when the terms "reside" and "residing" as used in N.D.C.C. §40-47-06, are viewed in terms of their ordinary sense, the context in which they are used, and the purpose which prompted their enactment, the conclusion that may be drawn is that the application of such terms should not be limited strictly to one's dwelling house. Instead, an attempt should be made to carry out the legislative intent in providing representation upon a city zoning commission exercising extraterritorial zoning authority for those persons affected and subject to such zoning authority.

In a factual situation involving a landowner who has land within the extraterritorial zoning authority of a city and yet whose actual dwelling house is located upon the same land but not physically within the extraterritorial zoning authority of the city, it would appear that the legislative intent behind the amendment to N.D.C.C. § 40-47-06 was designed to allow such a person to be represented upon the city zoning commission.

Sincerely,

Nicholas J. Spaeth

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cc: Howard D. Swanson, Assistant City Attorney